1931. In the circumstances I am of opinion that the second defendant cannot be said to have acted dishonestly or with deceit and that "fraud" within the meaning of Section 42 (ii) of the Land Code, 1926, cannot be ascribed to the second defendant and accordingly paragraphs A, B, C and D of the plaintiff's prayer cannot be granted and the suit must be dismissed with costs in favour of the second defendant.

The position of the first defendant in my opinion differs entirely from that of the second defendant for he had full knowledge of events which led up to the registration of the property in question in his name and that he held the lands as trustee for the plaintiff. He admitted in cross-examination that he got a summons on 26th October, 1929, for an extension of the Caveat and that when he made the charge on the 4th November, 1929, the application was pending. He goes on to say that he did not tell the second defendant of this because he was in debt and he was afraid the second defendant would not give him the money. This confirms me in finding that the second defendant was not a party to the fraud of the 1st defendant. In view of my findings in respect of the first defendant I make no order as to his costs.

Judgment for the Defendants.

[ORIGINAL CIVIL JURISDICTION]

RE H. A. PEREIRA

EX PARTE PAGOR SINGH (BHAGAT SINGH.)

[PERAK BANKRUPTCY No. 96 OF 1932.]

Bankruptcy Notice—Effect of order for payment of Debt by instalments.

The effect of obtaining an order for the payment of a judgment debt by instalments is to defeat bankruptcy proceedings in respect of the judgment debt in question, if the order for payment by instalments is made before an act of bankruptcy is committed. A Bankruptcy Notice, which is founded on the judgment as it originally stood, is thereby invalidated.

Creditor in person.

S. K. Dass for the debtor.

Cur. Ad. Vult.

MUDIE, J.—This is an application to set aside a Bankruptcy Notice on the ground that an order was subsequently made for payment of the judgment debt by instalments.

The Bankruptcy Notice was issued on the 30th June, 1932, and served on the debtor on the 7th July, 1932. The order for payment by instalments was made on the 5th July, 1932.

It is argued for the applicant that as long as the order for payment of the debt by instalments is in force, execution on the judgment will not be issued, *Montgomery & Co.* v. *De Blumes* (1898) 2 Q.B. 420 and a Bankruptcy Notice on the judgment will not issue.

The respondent contends that when the Bankruptcy Notice was issued, it was a good notice, and is not invalidated by an order subsequently made for payment by instalments.

The ground of the judgment in *Montgomery & Co.* v. *De Blumes* is that the judgment was modified by the order for payment by instalments. Chitty, L. J., in the course of his judgment says "It seems to me that so long as the county Court judge's order stands there is a modification of the order of the High Court; and it would involve a great injustice to a defendant if it were not so. The defendant is told that he is to pay by instalments, and the instalments in such a case are generally small..... A man in such a position exerts himself in order to get the money together for the purpose of complying with the order. He does so under stress of a liability to imprisonment if he makes default, but I think he would be likely to be misled, and it would put him in a hard position if he were told that he was still liable, in spite of that, to pay the whole debt, and that what goods he had could be taken in execution."

In my view the same principle is applicable to a Bankruptcy Notice. The judgment is modified by the order for payment by instalments, and it seems to me that the Bankruptcy Notice, which is founded on the judgment as it originally stood, is thereby invalidated.

This case is distinguishable from *Re a Debtor, ex parte Rock Red Brick Company* (1904) 90 L.T. 64; 52 W.R. 302, where an act of bankruptcy was committed before an order for payment by instalments is to defeat bankruptcy proceedings in respect of the judgment debt in question, if the order is made before an act of bankruptcy is committed.

The Bankruptcy Notice will be set aside. There will be no order as to costs.